

S. 2579, A BILL "TO AMEND THE PUBLIC HEALTH SERVICE ACT TO ESTABLISH A PRESIDENT'S COMMISSION FOR THE PROTECTION OF HUMAN SUBJECTS OF BIOMEDICAL AND BEHAVIORAL RESEARCH, AND FOR OTHER PURPOSES"

Proposed subsection 1801(e) states that each prospective member of the Commission "shall receive all department and agency security clearances" necessary to assure access to information. This reads as if receipt of the clearances is a matter of right. This certainly is not the case, nor is it the intent of the bill. Substituting instead the phrase "must have qualified for all appropriate department and agency security clearances," would place this provision in the appropriate context.

The provisions of proposed subsection 1801(e) recognize the need for protecting national security information from unauthorized disclosure. Such information may fall into two categories: that which is classified pursuant to criteria established by Executive Order, and that which is designated pursuant to the statutory responsibility of the Director of Central Intelligence (50 U.S.C. section 403(d)(3)) as information involving intelligence sources and methods. Proposed subsection 1801(f) provides that the current National Commission will remain in existence until the new Presidential Commission is established and that members of the current National Commission shall not have access to classified information until they have obtained appropriate security clearances. This prohibition covers only one category of national security information, and its protection should be expanded by amending line 7 of the subsection to read as follows:

"no classified information or information protected from unauthorized disclosure by statute shall be made available to such..."

Several of the provisions of the bill, such as proposed sections 1802, 1803, 1804 and 1805, require that the Commission issue reports. In addition, proposed subsection 1806(d) provides the Commission with broad authority to make information public, and proposed subsection 1806(e) calls for publication of certain information in the Federal Register. Proposed section 1807 limits these provisions by restraining the Commission from disclosing trade secrets and commercial or financial information and individually identifiable personal data. There is, however, no prohibition on disclosure of national security information to which the Commission may have access. S. 1893, this bill's predecessor, included language prohibiting the Commission from disclosing classified information, and failure to include such a prohibition

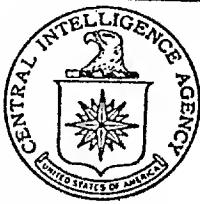
in this bill could be argued to be tacit consent to disclosure. Further, as outlined above, even a restriction on disclosure of classified information would not protect all national security information. In order to make the extent of the Commission's authority perfectly clear, the following new subsection could be added to proposed section 1807:

"(c) The Commission shall not disclose any information collected or maintained by it pursuant to this title which is properly classified or is protected from unauthorized disclosure by statute."

A further problem arises from the grant of authority to the Commission to hire various categories of personnel contained in proposed paragraphs 1806(b)(1), (2) and (3). Once hired, such persons undoubtedly will have access to information in the possession of the Commission. There is no requirement, however, that these persons be required to obtain security clearances; nor are there any prohibitions on their releasing information. A provision indicating that such persons are subject to the same security requirements and restrictions as the members of the Commission could be added to subsection 1806(b) as follows:

"(4) Any persons appointed or employed under this subsection by the Commission must obtain any necessary security clearances before being granted access to classified information or information protected from unauthorized disclosure by statute, and are subject to the same restrictions on release of information as the Commission."

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CENTRAL INTELLIGENCE AGENCY
Office of Legislative Counsel
Washington, D. C. 20505
Telephone: 351-6121 (Code 143-6121)

TO: Mr. Bob Wenger, Staff
Subcommittee on Health
Senate Committee on Human Resources

24 April 1978

Bob:

Attached is a paper which contains the amendments to S. 2579 we are seeking and outlines our reasons for doing so. As we discussed on Friday, please call (351-6126) if you have any problems.

Office of Legislative Counsel

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